IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID DI CARLO and PHYLLIS DIEGIDIO, H/W, Plaintiffs,	:	CIVIL ACTION
	:	No. 00-CV-4530
v.	:	
DAIMLERCHRYSLER CORPORATION, Defendant.	:	

GREEN, S.J. **May _____, 2001**

MEMORANDUM /ORDER

Presently before the Court is Defendant's Motion for Summary Judgment, and Plaintiffs' Response thereto. For the following reasons, Defendant's motion for summary judgment will be granted in part and deferred in part.

I. Factual and Procedural Background

On or about October 8, 1997, Plaintiff David DiCarlo ("DiCarlo") was injured when the radiator and cooling system of a car he was working on blew up.[1] At the time of the incident, DiCarlo was working as a mechanic at Lee's Auto Repair, and was working on a 1985 Chrysler Le Baron. Plaintiffs alleged that Mr. DiCarlo's injuries were a result of Defendant's defective radiator and cooling system. See **Pltfs.' Complt.** ¶ 9.

Plaintiffs initially filed a Writ of Summons in the Philadelphia Court of Common Pleas in March, 2000, and the court then issued a rule upon Plaintiffs to file a complaint. After Plaintiffs filed their Complaint, Defendant decided to remove the case to this Court, based on the diversity

[1] Unless otherwise noted, all facts are taken from Defendant's Motion for Summary Judgment, and have been admitted to by Plaintiffs. Plaintiffs did not file a memorandum with their Response to Defendant's motion, and simply admitted or denied the facts averred in Defendant's motion.

of the parties. Defendant has filed the instant motion for summary judgment based on their determination that the radiator in question was neither made nor approved by DaimlerChrysler.

II. Legal Standard

Defendant moves pursuant to Rule 56 of the Federal Rules of Civil Procedure. To be successful, Defendant must prove that, in considering the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, . . . there is no genuine issue as to any material fact and that the [Defendant] is entitled to a judgment as a matter of law." See Fed. R. Civ. P. 56(c). Summary judgment should be granted, "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In deciding this motion, I must draw all reasonable inferences in favor of the party against whom judgment is sought. See American Flint Glass Workers, AFL-CIO v. Beaumont Glass Company, 62 F.3d 574, 578 (3d Cir. 1995). "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of material fact. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56(e). The substantive law controlling the case will determine those facts that are material for the purpose of summary judgment. See Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986).

"As a basic premise, federal courts sitting in diversity are required to apply the

substantive law of the state whose laws govern the action." Robertson v. Allied Signal, Inc., 914 F.2d 360, 378 (3d Cir. 1990). "When ascertaining matters of state law, the decisions of the state's highest court constitute the authoritative source." Connecticut Mutual Life Insurance Co. v. Wyman, 718 F.2d 63, 65 (3d Cir. 1983).

The instant matter is before the Court due to the diversity of the parties, and the Court will apply Pennsylvania law to the matter sub judice.[2] Plaintiffs' claims sound in negligence and strict product liability, but essentially revolve around allegations that Defendant is the cause of Plaintiffs' damages because of an allegedly defective radiator and cooling system in a 1985 Chrysler Le Baron. Defendant argues that, after investigation of the radiator involved, there can be no liability against the Defendant as a matter of law, because the radiator which allegedly injured Mr. DiCarlo was neither manufactured nor authorized by Defendant. Plaintiffs provide no evidence to counter Defendant's averments, but do indicate that Plaintiffs' claims involve not only the radiator but also the cooling system of the vehicle in question. Therefore, Plaintiffs posit, since Defendant has not challenged Plaintiffs' allegations regarding the other components of the subject vehicle, summary judgment is inappropriate.

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[2] Neither party specifically argues that Pennsylvania law does or does not apply. However, Plaintiff DiCarlo lives in Pennsylvania, and Defendant relies on Pennsylvania law in their motion for summary judgment. See **Pltfs.' Complt.** ¶ 1; **Dfdt.'s Mem. of Law** at 5. Generally, in resolving a claim brought under the Court's diversity jurisdiction, the law to be applied is the law of the forum state. See Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938); see also Gasperini v. Center for Humanities, Inc., 518 U.S. 415, 417 (1996) (holding that, under Erie doctrine, "federal courts sitting in diversity apply state substantive law and federal procedural law"). Neither the Complaint nor any of the papers submitted by the parties has the address of the other Plaintiff in this matter, Phyllis Diegidio. Also, there is no information as to the location of Lee's Auto Body, the body shop where the alleged incident occurred. Since neither party disputes the application of Pennsylvania law, I will apply Pennsylvania law to examine the matter sub judice.

In Pennsylvania, a manufacturer's liability for its defective products is governed by section 402A of the Restatement (Second) of Torts, which was adopted by the Pennsylvania Supreme Court in Webb v. Zern, 422 Pa. 424, 220 A.2d 853 (1966). Under section 402A, a plaintiff must prove that the product was sold in a defective condition that is unreasonably dangerous to the user and that the defect was the proximate cause of the injuries. Berkebile v. Brantly Helicopter Corp., 462 Pa. 83, 93, 337 A.2d 893, 898 (1975). Of course, it is clear that to prove liability against a defendant, a plaintiff must show that the product at issue is one of the defendant's products. In this instant matter, Defendant alleges that the radiator in question is not one of their products, and that, therefore, Plaintiffs can show no liability against Defendant.

III. Discussion

To support Defendant's assertion that the radiator in question was neither manufactured nor authorized by DaimlerChrysler, they have attached the Affidavit of Robert D. Banta ("Affidavit"). See **Dfdt.'s Mem. of Law** Exhibit F. Robert D. Banta is a senior product analysis engineer at DaimlerChrysler Corporation. See **Dfdt.'s Mem. of Law** Exhibit F ¶ 1. After reciting his credentials and investigation of the radiator in question, Mr. Banta concluded that the radiator which allegedly injured Mr. DiCarlo was not manufactured or authorized by Defendant. See **Dfdt.'s Mem. of Law** Exhibit F ¶¶ 2-7, 33. He based this conclusion on several factors. First, the radiator was missing either the DaimlerChrysler pentastar logo or any other markings indicative of a DaimlerChrysler component part. See **Dfdt.'s Mem. of Law** Exhibit F ¶¶ 13-15, 19. Second, Mr. Banta examined a 1985 Chrysler Le Baron which still had its original radiator, and confirmed that the radiator in the exemplar vehicle bore the identifying markings expected of a DaimlerChrysler product. See **Dfdt.'s Mem. of Law** Exhibit F ¶¶ 28-30. Finally, Mr. Banta

"confirmed that any authorized Chrysler radiator that is manufactured by its suppliers for use in a 1985 Chrysler Le Baron must include the same Chrysler Corporation part number, pentastar logo and other identifying numbers that are described in the drawings" which are attached to Defendant's memorandum. See **Dfdt.'s Mem. of Law** Exhibit D ¶ 31; **Dfdt.'s Mem. of Law** Exhibit 3. Factoring these and other considerations into his analysis, and after personally examining the radiator at issue, Mr. Banta concluded that this radiator was neither manufactured nor authorized by DaimlerChrysler. See **Dfdt.'s Mem. of Law** Exhibit F ¶ 33.

Since Defendant has provided evidence that it neither manufactured nor authorized the radiator in question, the burden is now on Plaintiffs to come forward with evidence to show that there exists a genuine issue of material fact regarding this topic. Plaintiffs have not done so.[3] Therefore, I will grant Defendant's motion for summary judgment on this issue.

Defendant has moved for summary judgment as to the entire Complaint. Plaintiffs aver that Defendant has produced evidence regarding the radiator, without addressing the rest of the cooling system. In their Complaint, Plaintiffs clearly alleged that their damages were caused by Defendant's "radiator and/or cooling system." See **Pltfs.' Complt.** ¶ 8. Of course, Plaintiffs

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[3] Instead of coming forward with evidence, Plaintiffs merely stated that the "said radiator has a copper tag permanently attached to said radiator which Plaintiff[s are] attempting to identify", contend that Mr. Banta's Affidavit is "naturally self-serving and does not address the question of what radiator was put into the vehicle on the assembly line or in a Chrysler" dealer's repair shop, and that Mr. Banta did not address the other components of the vehicle's cooling system. See **Pltfs.' Response** ¶¶ 23, 25. However, Plaintiffs offer no evidence to support their position. Though the incident occurred in October of 1997, Plaintiffs have not retained an expert or addressed the issue of the alleged copper tag. Also, even though they were aware that Defendant was questioning the origination of the radiator, Plaintiffs have submitted no evidence that Defendant either manufactured or authorized it. The conjecture that the radiator was placed in the vehicle on the assembly line or in a Chrysler dealer's repair shop is just that: conjecture. See **Pltfs.' Response** ¶ 25. Again, however, Plaintiffs provide no evidence to support their assertions.

have the burden to show there is some defect, and at this point, Plaintiffs have not done so. It may be that Plaintiffs have not come forward with evidence of any defect because of an agreement between the parties to concentrate discovery on only one issue.[4] It would be unjust to grant summary judgment on issues which have not been properly developed. Therefore, while I will grant summary judgment on the issue of the radiator, the decision regarding the remainder of the Complaint will be deferred for 20 days, to permit Plaintiffs to either make a proffer showing evidence of a defect for which Defendant may be liable,[5] or to move for other appropriate relief with cause shown. Defendant will then have 10 days to respond to Plaintiffs' action.

IV. Conclusion

I conclude that Plaintiffs have failed to come forward with any evidence which would create a genuine issue of material fact regarding the Defendant's liability for Plaintiffs' damages arising out of the subject radiator. Therefore, for the foregoing reasons, Defendant's motion for summary judgment will be granted as to that issue. Since it is possible that, by agreement of the parties, discovery was only conducted regarding the identity of the subject radiator, the determination on the remaining issues will be deferred. An appropriate order follows.

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[4] Neither party specifically states that such an agreement occurred, though a review of the memoranda submitted indicates the existence of such an agreement. Defendant's counsel indicates that after he personally examined the radiator on the day of Mr. DiCarlo's deposition, the parties agreed to suspend the deposition while Defendant conducted an investigation into the radiator. See **Dfdt.'s Mem. of Law** at 1-2. While there is no other indication of the parties' agreement in either Defendant's memorandum or Plaintiffs' response, Defendant does state in its Conditional Motion for Extension of the Discovery Deadline that "the parties did not include all the discovery needed in this case because it became apparent to [D]efendant's counsel that the radiator was not DaimlerChrysler Corporation's." See **Dfdt.'s Motion for Discovery Extension** ¶ 3. Therefore, it appears that the parties agreed to conduct discovery on this one issue.

[5] It should be noted that Plaintiffs have not identified an expert, or produced any evidence showing the existence of any defect which either Defendant or any other party may be liable.

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DAIMLERCHRYSLER CORPORATION, Defendant.	:	

ORDER

AND NOW, this _____ day of May, 2001, upon consideration of (1) Defendant's Motion for Summary Judgment (Docket # 6), and Plaintiffs' Response thereto; and, (2) Defendant's Conditional Motion for Extension of the Discovery Deadline (Docket # 5), **IT IS HEREBY ORDERED** that Defendant's motion for summary judgment (Docket # 6) will be **GRANTED**, **AS TO PLAINTIFFS' CLAIMS AGAINST DEFENDANT INVOLVING THE RADIATOR**. Defendant's motion is **DEFERRED AS TO ALL REMAINING ISSUES**. Plaintiffs have **20 DAYS** from the date of this Order to either make a proffer showing evidence of a defect for which Defendant may be liable or to move for other appropriate relief, with cause shown. If Plaintiffs make a proffer or other submission, Defendant will have **10 DAYS** to respond. If Plaintiffs take no further action within the allotted time frame, the Court will, **upon motion** of Defendant, grant summary judgment as to the remaining issues.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.